



April 3, 2001

Mr. Don Clark
Office of the Secretary
Federal Trade Commission
Room 159
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: V010003 – Comments Regarding Energy Competition.

Dear Mr. Clark:

AARP appreciates this opportunity to comment on the Federal Trade Commission's (FTC) Notice for Information regarding different regulatory approaches to the introduction of competition into the retail sale of electricity. AARP's membership has a vested interest in the move towards competition now underway in the electric utility industry. At both the federal and state levels, AARP has advocated on behalf of residential consumers in legislative and regulatory proceedings for some time. This submission will summarize many of the issues with which states are dealing or have dealt, that are of concern to us. Additionally, the comments will focus on AARP's participation in the process to address these issues in a number of states and when applicable, how these issues have been resolved.

For everyone, electricity is a basic necessity of modern life. The cost of this necessity can comprise a significant portion of an average consumer's personal expenditures. In fact, energy costs can take up to as much as 5 percent of the median-income household's monthly budget. Older Americans are particularly vulnerable to rapid increases in energy prices. Although older persons consume approximately the same amount of residential energy as non-elderly Americans do, they devote a higher *percentage* of total spending to residential energy. Among low-income older families, an average of 23 percent of their income is spent on residential energy. With the recent price spikes in natural gas and attendant increases in electricity rates in a number of states, this percentage is sure to rise, heightening our concerns. Too often, low-income older persons are faced with the choice of risking their health and comfort by cutting back on energy expenditures or reducing spending for other basic necessities.

The fate of residential consumers in a restructured electric industry will depend on whether the new market structure gives them a fair chance to receive the benefits of competition, ensures that their interests are represented in the market, and provides fundamental protections against abuse.



Residential ratepayers, and particularly older Americans, thus face very significant risks -- and few, if any, assured benefits -- in the move to retail competition in the electric power industry. These risks go beyond the ability to benefit from choice. They also include risks associated with confusion, deception and fraud.

Therefore, AARP has generally focused our state level advocacy activities on the continuation of consumer protection programs and the assurance of safe, reliable, high quality service for consumers.

Recognizing that states take a variety of approaches to restructuring the electric utility industry, AARP has tailored its advocacy efforts on a state-by-state basis to address issues of critical importance to residential consumers. Among these issues are supplier licensing and certification, service quality and reliability, universal service, privacy, customer education, customer billing, and the marketing of services. Following are examples of the Association's efforts to address these issues in California, Connecticut, Maine, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and West Virginia.

Supplier Licensing and Certification

A key ingredient to any successful restructuring effort is ensuring that markets are competitive. AARP believes that one of the ways in which residential consumers can benefit from restructuring is through the assurance of a number of providers of services for consumers to choose among. While we welcome state restructuring efforts that produce a wealth of suppliers, AARP has been working with state legislators to ensure that, at the same time, necessary licensing and certification requirements are put in place. Without these safeguards, consumers are at risk as viable providers may offer service one day, and withdraw from the market the next.

We addressed this issue in West Virginia, a state that has put restructuring efforts on hold for the time being. AARP recommended that the Public Utility Commission be given the authority to require retail suppliers to be licensed before they can conduct business within the state. The role of the West Virginia Commission would be to ensure financial safety, system reliability and basic consumer protections.

In Ohio, where a restructuring plan was approved in 1999, the law requires that the Public Utility Commission's certification rules "protect customers and electric distribution utilities from default." [O.R.C. Section 4928.08(B)]. This provision supports AARP's position that the Ohio Commission should assert a more direct role in the protection of residential and commercial customers.

Another measure that we have advocated for in the area of licensing and certification is the requirement that a provider post a performance bond. The states of California, Connecticut, Maine, New Jersey and Pennsylvania have all adopted a requirement for a performance bond or letter of credit payable to the state PUC. There are two benefits

associated with requiring a bond or letter of credit as proof of a supplier's financial soundness: 1) Those who are less financially sound or more risky will probably pay more for their performance bond. 2) The bond provides a source of funds both to pay for system-wide costs and to compensate individual customers at the direction of the PUC.

A final area that AARP believes is critical to ensuring that suppliers are worthy of providing services to residential consumers in a given state is their ability to manage their business. AARP has recommended that the business applicant be required to demonstrate the ability to comply with the consumer protection requirements in the PUC's rules and other state law. As a means to demonstrate ability to manage, some of the information to be submitted should include: experience in energy or other service-related industries; staffing and staff training commitments; arrangements for customer education and information service; customer satisfaction survey results; government agency records or reports; and complaint statistics compiled by any state or local government agency.

Service Quality and Reliability

Along with affordability, perhaps the most important areas of concern regarding utility service for residential consumers are those of service quality and reliability. Absent a reliable electricity system, consumers will have little interest in risking the loss of an essential service to change providers. The same is true if the quality of the service is unacceptable.

AARP has had significant involvement in Ohio, working with the legislature and the PUC to ensure that the service quality and reliability of the system are not compromised in a restructured environment. Because of their continuing ownership of the distribution system, that state's distribution utilities will remain responsible for most aspects of quality of service. They will remain responsible for service reliability issues such as outages -- including their frequency and duration, the installation of service, line extensions in previously unserved areas, disconnection of service, complaint resolution concerning distribution services, change-orders for customer-supplier relationships and billing and collection for at least distribution charges and perhaps for generation and transmission as well. AARP supports Ohio's restructuring law that reaffirms the duty of the distribution utilities to maintain service quality and reliability in the transition to a new industry structure. We also support state establishment of a Service Quality Index (SQI) for each electric distribution utility. This SQI should include information gleaned from customers who have initiated a request for service or called the utility with a question or concern on their bill. These transaction-based surveys should be done routinely (monthly or quarterly) by telephone or postcard, and should have a statistically valid response rate.

AARP has also advocated the need for information on phone center performance. Reports should include the percentage of calls answered within 30 seconds, busy rates, and the average speed of answer. Response time on customer complaints, as well as the performance of field personnel, including the percentage of appointments kept, repair or

installation delays, the accuracy of meter readings; billing error rates and violations of PUC rules as determined by PUC audits should be disclosed as well.

Additionally, utilities should continue to collect data via the System Average Interruption Frequency Index, Customer Average Interruption Duration Index, and Customer Average Interruption Frequency Index. Utilities also should track and monitor momentary outages and interruptions which adversely affect appliances with computerized chips or digital capabilities.

AARP believes that if a utility's service quality has been above average or adequate in the recent past, then the utility's own historic data should be used to establish an acceptable baseline for future performance. If current quality is inadequate, then historical data should be used to determine whether a recent service downturn could be detected and removed from the calculation to get an acceptable baseline. If the utility does not meet the performance baseline, mandatory penalties via revenue requirement reductions should be imposed. The utility should not be rewarded for service quality below the baseline performance level. Penalties will ensure that the utility will not attempt to reduce spending on customer service in order to increase earnings. There must be a pre-established penalty mechanism, and the mechanism should include a penalty amount that is substantial, so that it can serve as a deterrent to decreased utility spending to maintain or improve service quality. Ratepayers pay for quality service in their rates, as a cost of service, so if utilities cannot meet service and reliability standards then ratepayers should get something back.

AARP also believes that an important component of service quality is the ability to respond to the consumer. We have contended that in complaints requiring coordination between the distribution utility and the competitive provider, the distribution utility should be responsible for tracking and assuring such coordination and communication. If the complaint relates only to the supplier's services, then the distribution utility should refer the customer to the supplier and inform the customer of their right to contact the state utility commission. There should also be a requirement that the responsible entity respond to complaints within a reasonable time period and within no more than 10 days. Providers should be required to submit annual reports that include complaint information such as the volume of complaints, the topic of the complaint, the resolution or restitution resulting from the complaint, and the company's performance in handling complaints.

Universal Service

The tenet that electric utility service should be universal – that is, available and affordable to every consumer -- is fundamental. Prior to restructuring, utilities provided service to consumers under their "obligation to serve." Programs to aid those consumers who have difficulty paying their bills, such as the Low Income Home Energy Assistance Program (LIHEAP), have served to assist less fortunate consumers. In a competitive marketplace, however, AARP is deeply concerned that many of the funding mechanisms will dissipate and that the former "obligation to serve" will no longer apply.

We have been working at both the federal and state levels to ensure that universal service is a part of every legislative or regulatory effort to restructure. West Virginia provides an example of the types of measures AARP is advocating for in this area. In West Virginia, we have recommended that the state adopt a comprehensive low-income bill payment assistance and energy management program for customers with an annual income at or below 150% of poverty. In addition, we recommended that the West Virginia Commission mandate that any ratepayer-funded benefits delivered to low-income customers be "portable" in the competitive market -- that is, low-income customers should be able to carry their program benefits to a supplier of their choice.

Privacy

The FTC is to be commended for the significant work done to date in addressing privacy concerns in a variety of areas. The privacy concerns in the electric utility industry are certainly not unique, but require action nonetheless. AARP has actively pursued privacy protections in the states as well. We have supported provisions that prevent distribution companies from releasing customer billing and payment history. However, we support the release of usage history with customer consent. Utilities should not be allowed to release this information except to credit reporting agencies in compliance with the Fair Credit Reporting Act. Further, the distribution utility should only provide the customer's account number, service address, billing address, usage history, and rate classification after getting the customer's authorization, and the customer should be able to get a copy on request of his or her own usage, billing and payment history without charge from a provider at least once annually.

Consumer Education

Since consumers, regardless of age, have throughout their lives been provided with regulated electricity, it is imperative that they be educated about shopping for electricity. AARP views education as an important defense against fraud. In states where we have been active on electric restructuring issues, we have stressed that the emphasis should be on education rather than "awareness." AARP believes that the multi-million dollar restructuring awareness campaign conducted in California prior to the implementation of the law was improperly focused. Consumers need to know more than just the fact that competition is coming.

In West Virginia, for example, we have highlighted the importance of coordinating grassroots education efforts with mass media campaigns and public service announcements. We urged the formation of an advisory committee or task force with representatives from all of the key stakeholder groups, whose purpose would be to make recommendations for a consumer education plan.

Customer Billing

Successfully devising the method by which customers are billed and properly addressing the many subordinate issues attendant to billing are vitally important elements in restructuring legislation, and regulation. The inability of legislators and regulators to adequately address these concerns could be the difference between a thriving, competitive market and one that has been abandoned.

AARP was active in the rulemaking proceeding at the Federal Communications Commission leading to the adoption of Truth-in-Billing for telecommunications services. Many of the requirements we sought at the FCC are transferable to electricity bills. Specifically, AARP supports formatting bills such that electric service is unbundled and presented in a graphically separate manner, so that the customer is easily able to identify and compare prices. The states of Pennsylvania and Maine have taken this approach in their rules. Utilities should also be required to maintain adequate in-person payment and customer service centers within their service territories. This accommodation remains a vital link between the customer and the utility and should be maintained. Additionally, in West Virginia, we recommended the adoption of restrictions against redlining and the regulation of certain contract terms, such as late fees, notices of renewal, length of contract term, notices of contract cancellation, dispute resolution and billing.

Similarly, utilities should be required to offer budget payment plans to residential customers as a means to soften the impact that high winter and summer utility bills can have on consumers. These high electric bills can be difficult enough to pay when that is the only service on the billing statement. However, as more and more services are rolled into the utility bill, many low to middle-income consumers might have serious difficulties in paying the entire bill on time. For that reason, AARP believes that a consumer should not be disconnected from distribution service for non-payment of other competitive services. Policies along this line have been adopted in Connecticut, Massachusetts, New Jersey, Pennsylvania, and most other states that have implemented retail competition.

Two other areas related to customer's bills in which AARP has an interest are switching fees and slamming. We believe that switching fees, a charge for changing providers, should be prohibited. The fees would discriminate against new providers who have to get new customers one at a time and may not try to get residential and small commercial customers if additional fees are imposed. Most states have prohibited these fees, especially during the transition to competition. AARP is concerned that the practice of slamming, switching a consumer from one provider to another without the consumer's consent, will become an issue in electricity as it has been in telecommunications for some time. AARP supports the complaint procedures adopted in Maine, Massachusetts and Pennsylvania that hold the consumer harmless until the dispute is settled. Our hope is that taking the profit out of slamming will also remove the incentive.

Marketing of Services

With the risk of consumer confusion very high as utilities and service providers begin to sell their products and services to the general population, it becomes imperative that standards be set to minimize misunderstandings, and to reduce the potential for misrepresentation and fraud. AARP has advocated for a uniform method of price disclosure so that consumers can compare offers and prices.

An approach that AARP has supported and which has been adopted in Connecticut, Maine, Massachusetts, New Jersey and Pennsylvania is a requirement that at the marketing and advertising stage, providers must disclose the price and associated contract terms of electric service. Such a document should be mandatory in all written solicitations mailed to customers and should be conspicuously disclosed in any mass-market media advertising. Customers should receive a summary of the contract terms at the point at which the customer is bound by an agreement with a provider. This information should include information about the customer's right of rescission and how to exercise that right. The terms-of-service document should include disclosure of a Do-Not-Call list and how a customer can get on the list.

Door-to-door sales of electricity goods and services require specific consumer protection rules. AARP has proposed that any marketer using door-to-door sales be required to notify the relevant regulatory agency and provide a copy of its sales contracts, sales literature, and agent training materials. Additionally, the marketer should be required to wear and display prominently current photo identification. Michigan rules in this area include a prohibition of the use of the name of the distribution utility from all descriptions of the program being marketed, so customers will not be confused about marketer's identity, and conspicuous acknowledgement above the customer's signature line, in at least 14-point type, that the customer has the authority to enter into the agreement and that the purpose of the agreement is to change the customer's electric provider. Also, the terms of the service document and a copy of customer's signature must be left with the customer at the time of the sale. The law also requires that the sales agent affirmatively offer to show the customer his/her photo ID, listing the competitor's certification number and the PUC's 800 number.

Similarly, when a salesperson is utilizing telemarketing to contact a consumer, the provider must disclose or offer to disclose the price and contract terms. If the customer agrees to enroll, the provider is required to mail the terms of the service document to the customer. Those enrolling consumers by Internet need to use encrypted customer input and the consumer must have the ability to access their contract at the provider's web site during the life of the contract.

Also, providers are prohibited from using negative option check-off to change or renew a contract, and contract terms must be limited to a maximum of 24 months. If a provider

wants to alter terms or price during the contract term, they must get affirmative customer authorization or agreement to the new terms.

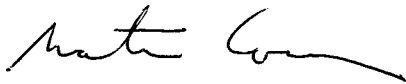
Finally, AARP supports the provisions in Maine and Pennsylvania statutes that prohibit credit discrimination and redlining; we also support a Pennsylvania provision that limits the deposit amount to two months of prospective service at the price offered by the provider.

Conclusion

AARP appreciates the Federal Trade Commission's effort to gather information regarding the results to date of different regulatory approaches to the introduction of competition into the retail sale of electricity. The Association has some serious concerns about the impact restructuring will have on residential consumers. Our work at both the federal and state levels of government has been focused on assuring that AARP's members are not harmed by the move to competitive markets. Our submission today outlines some of the concerns we have as well as how some states have addressed those concerns.

We appreciate the opportunity to comment and hope that our submission will prove useful to the Commission in its production of a final report. If you have any questions, please feel free to contact me or call Jeff Kramer of the Federal Affairs staff at 202/434-3800.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Corry", with a stylized flourish at the end.

Martin A. Corry
Director
Federal Affairs